

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION OF A NEW)
RULE RELATING TO THE UTILIZATION OF) RULE 92-5
LEGAL ASSISTANTS)

Pursuant to a hearing held on February 13, 1992, at Pierre, South Dakota, relating to the adoption of a new rule regarding the utilization of legal assistants, the Court having considered the proposed new rule, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that the following new rule be and it is hereby adopted to read in its entirety as follows:

Definition of Legal Assistant. Legal assistants (also known as paralegals) are a distinguishable group of persons who assist lawyers in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which will qualify them to do work of a legal nature under the direct supervision of a licensed lawyer.

Certain Individuals Disqualified. Any person having been convicted of a felony shall not serve as a legal assistant in the State of South Dakota, unless upon application to the Supreme Court of South Dakota, establishing good moral character and restoration of full civil rights, and its approval thereof.

Minimum Qualifications.

- (1) Successful completion of the Certified Legal Assistant (CLA) examination of the National Association of Legal Assistants, Inc.; or
- (2) Graduation from an ABA approved program of study for legal assistants; or

- (3) Graduation from a course of study for legal assistants which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of sixty semester hours of classroom study; or
- (4) Graduation from a course of study for legal assistants, other than those set forth in (2) and (3) above, plus not less than six months of in-house training as a legal assistant; or
- (5) A baccalaureate degree in any field, plus not less than six months in-house training as a legal assistant; or
- (6) A minimum of three years of law-related experience under the supervision of a lawyer, including at least six months of in-house training as a legal assistant; or
- (7) Two years of in-house training as a legal assistant.

Provided, further, that any legal assistant hereunder shall have a high school diploma or general equivalency diploma (GED).

For purposes of these standards, "in-house training as a legal assistant" means lawyer education of the employee concerning legal assistant duties and these guidelines. In addition to review and analysis of assignments, the legal assistant should receive a reasonable amount of instruction directly related to the duties and obligations of the legal assistant.

Utilization of legal assistants is subject to the following rules:

- (1) A lawyer may permit a legal assistant to assist in all aspects of the lawyer's representation of a client, provided that:
 - (a) The status of the legal assistant is disclosed at the outset of any professional relationship with a client, other lawyers, courts or administrative agencies, or members of the general public;
 - (b) The lawyer establishes the lawyer-client relationship, is available to the client, and maintains control of all client matters;
 - (c) The lawyer reviews the legal assistant's work product and supervises performance of the duties assigned;
 - (d) The lawyer remains responsible for the services performed by the legal assistant to the same extent as though such services had been furnished

- entirely by the lawyer and such actions were those of the lawyer;
- (e) The services performed by the legal assistant supplement, merge with and become part of the lawyer's work product;
 - (f) The services performed by the legal assistant do not require the exercise of unsupervised legal judgment; this provision does not prohibit a legal assistant appearing and representing a client at an administrative hearing provided that the agency or board having jurisdiction does not have a rule forbidding persons other than licensed attorneys to do so and providing that the other rules pertaining to the utilization of legal assistants are met; and
 - (g) The lawyer instructs the legal assistant concerning standards of client confidentiality.

A legal assistant may not establish the lawyer-client relationship, set legal fees, give legal advice or represent a client in court; nor encourage, engage in, or contribute to any act which would constitute the unauthorized practice of law.

- (2) A legal assistant may author and sign correspondence on the lawyer's letterhead, provided the legal assistant's status is indicated and the correspondence does not contain legal opinions or give legal advice.
- (3) A lawyer may identify a legal assistant by name and title on the lawyer's letterhead and on business cards identifying the lawyer's firm.

Restatement of Ethical Considerations. The proper use of assistants who are not licensed lawyers significantly increases the ability of lawyers to provide quality professional services to the public at reasonable cost. A lawyer cannot, however, delegate his or her ethical proscriptions by claiming that the violation was that of an employee. Thus, in order to secure compliance with the Rules of Professional Conduct more specifically as stated in SDCL 16-18, the following ethical guidelines are applicable to the lawyer's use of nonlicensed assistants:

- (1) A lawyer shall ascertain the assistant's abilities, limitations, and training, and must limit the assistant's duties and

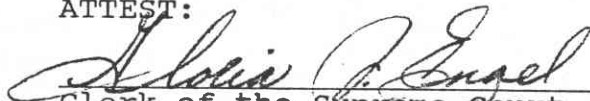
- responsibilities to those that can be competently performed in view of those abilities, limitations, and training.
- (2) A lawyer shall educate and train assistants with respect to the ethical standards which apply to the lawyer.
 - (3) A lawyer is responsible for monitoring and supervising the work of assistants in order to assure that the services rendered by the assistant are performed competently and in a professional manner.
 - (4) A lawyer is responsible for assuring that the assistant does not engage in the unauthorized practice of law.
 - (5) A lawyer is responsible for the improper behavior or activities of assistants and must take appropriate action to prevent recurrence of improper behavior or activities.
 - (6) Assistants who deal directly with a lawyer's clients must be identified to those clients as nonlawyers, and the lawyer is responsible for obtaining the understanding of the clients with respect to the rule of and the limitations which apply to those assistants.
 - (7) A legal assistant should understand the Rules of Professional Conduct and these Rules in order to avoid any action which would involve the lawyer in a violation of SDCL 16-18, or give the appearance of professional impropriety.
 - (8) A lawyer takes reasonable measures to insure that all client confidences are preserved by a legal assistant.
 - (9) A lawyer takes reasonable measures to prevent conflicts of interest resulting from a legal assistant's other employment or interest insofar as such other employment or interest would present a conflict of interest if it were that of the lawyer.
 - (10) A lawyer may include a charge for the work performed by a legal assistant in setting a charge for legal services.
 - (11) A lawyer may not split legal fees with a legal assistant nor pay a legal assistant for the referral of legal business. A lawyer may compensate a legal assistant based on the quantity and quality of the legal assistant's work and the value of that work to a law practice, but the legal assistant's compensation may not be, by advance agreement, contingent upon the profitability of the lawyer's practice.

IT IS FURTHER ORDERED that this rule shall become effective
July 1, 1992.

DATED at Pierre, South Dakota, this 6th day of March, 1992.

BY THE COURT:

ATTEST:


Clerk of the Supreme Court
(SEAL)


Robert A. Miller, Chief Justice

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 06 1992


Clerk